

EXHIBIT 3-G

SAMPLE FORMAT FOR CDBG SUPPLEMENTAL CONDITIONS TO STANDARD CONTRACTS FOR ARCHITECTURAL, ENGINEERING, AND GRANT ADMINISTRATION SERVICES

Note: This *sample* could be used as a *supplement* to a firm's existing contract format, *i.e., in conjunction with* a firm's existing contract format. The contract clauses that are required for all contracts are marked with an asterisk (*). (Also see Exhibit 3-F, Sample Format for a Professional Services Contract. 3-F is meant to serve as a stand-alone contract document, while 3-G is meant as a supplement to an existing contract format.)

The following Supplemental Conditions are hereby made a part of the contract to which they are appended supplementing that contract and superseding any of its articles of which they are in conflict.

1. LIAISON. The (City's/Town's/County's) designated liaison with the Contractor is _____. The Contractor's designated liaison with the (City/Town/County) is _____.
2. (*) INDEPENDENT CONTRACTOR. It is understood by the parties hereto that the Contractor is an independent contractor and as such neither it nor its employees, if any, are employees of the (City/Town/County) for purposes of tax, retirement system, or social security (FICA) withholding. It is further understood that pursuant to section 39-71-401, MCA, the Contractor has obtained, and will maintain at its expense for the duration of this Contract, coverage in a workers' compensation plan for its principles and employees for the services to be performed hereunder.
3. (*) EFFECTIVE DATE AND TIME OF PERFORMANCE. This Contract takes effect on _____. The services to be performed by the Contractor will be completed no later than _____.
4. MODIFICATION AND ASSIGNABILITY OF CONTRACT. This Contract contains the entire agreement between the parties, and no statements, promises, or inducements made by either party, or agents of either party, which are not contained in the written Contract, are valid or binding. This Contract may not be enlarged, modified or altered except upon written agreement signed by both parties hereto. The Contractor may not subcontract or assign its rights (including the right to compensation) or duties arising hereunder without the prior written consent of the (City/Town/County). Any subcontract or assignee will be bound by the terms and conditions of this contract.
5. (*) COMPENSATION. Neither the cost of architectural, engineering, or grant administrative services plus a percentage of that cost method nor the percentage of construction cost method will serve as the basis for compensating the architect, engineer, or grant administrator for its services provided under this Contract.

For the satisfactory completion of the services to be provided under this Contract, the (City/Town/County) will pay the Contractor a sum not to exceed \$_____ as in the manner set forth in the attached Exhibit _____, which by this reference is made a part of this contract. Each specific service the Contractor will provide under this contract, and the maximum amount that the (City/Town/County) will pay the Contractor for each of these services, is set forth in the attached Exhibit _____.

The amount to be paid will be calculated according to the hourly billing rates for the various personnel as described in Exhibit _____. The Contractor may submit monthly requests for payment, based on actual work performed, which must be accompanied by an itemized invoice describing the services furnished, the number of hours worked to accomplish each item, the amount being billed for each item, a description of any other eligible expenses incurred during the billing period, and the total amount being billed.

6. **(*) SCOPE OF SERVICES.** The Architect and/or Engineer will perform the following services:

(Here, or in an exhibit to the contract, explicitly and completely list the services and products the grant recipient expects of the Architect and/or Engineer, including the timetable for completion of key tasks. Consult with your CDBG liaison as to the specific services that may be appropriate for each grant category.)

It is understood and agreed by the parties that the services of the Architect and/or Engineer do not include any of the following: the disbursement or accounting of funds distributed by the (City's/Town's/County's) financial officer, legal advice, fiscal audits or assistance with activities not related to the CDBG project.

7. **PRE-CONSTRUCTION CONFERENCE.** After the construction contract(s) for the project contemplated by this Contract have been awarded, but before the start of construction, a conference will be held for the purpose of familiarizing the successful bidder with the federal and State requirements which apply to projects funded in whole or in part by a Community Development Block Grant (CDBG). Additionally, discussions will take place on such matters as project supervision, coordination with city or county officials, on-site inspections, progress schedules and reports, payrolls, payments to contractors, contract change orders, insurance, safety and other items pertinent to the project. The Contractor may be responsible for conducting this conference.

8. **CONDITIONAL AGREEMENT.** It is expressly understood by the parties hereto that this Contract is dependent and conditioned upon the receipt by the (City/Town/County) Community Development Block Grant funds from the Department and that in the event that said funds are not provided, the (City/Town/County) incurs no responsibilities or liabilities under this Contract.

9. **(*) TERMINATION OF CONTRACT.** This Contract may be terminated as follows:

(a) **Termination due to loss of funding.** This Contract will terminate, in whole or in part, at the discretion of the (City/Town/County) in the event that the Department reduces or terminates payments under the CDBG Program so as to prevent the (City/Town/County) from paying the Contractor with CDBG funds. In this event, the (City/Town/County) will give the Contractor advance written notice which sets forth the effective date of the termination and explain that the termination is due to a loss or reduction of the CDBG Program grant.

(b) **Termination for cause.**

(i) If the (City/Town/County) determines that the Contractor has failed to comply with the terms and conditions of the Contract, it may terminate this Contract in whole or in part at any time before the date of completion. If the Contractor fails to comply with any of the terms and conditions of this Contract, the (City/Town/County) may give notice, in writing, to the Contractor of any or all deficiencies claimed. The notice will be sufficient for all purposes if it describes the default in general terms. If all defaults are not cured and corrected within a

reasonable period to be specified in the notice, (City/Town/County) may, with no further notice, declare this Contract to be terminated. The Contractor will thereafter be entitled to receive payment for those services reasonably performed to the date of termination less the amount of reasonable damages suffered by the (City/Town/County) by reason of the Contractor's failure to comply with this Contract.

- (ii) Notwithstanding the above, the Contractor is not relieved of liability to the (City/Town/County) for damages sustained by the (City/Town/County) by virtue of any breach of this Contract by the Contractor, and the (City/Town/County) may withhold any payments to the Contractor for the purpose of setoff until such time as the exact amount of damages due the (City/Town/County) from the Contractor is determined.

10. (*) CONFLICT OF INTEREST. The Contractor covenants that it presently has no interest and will not acquire any interest, direct or indirect, in the CDBG project which would conflict in any manner or degree with the performance of its services hereunder. The Contractor further covenants that, in the performing this Contract, it will employ no person who has any such interest.
11. (*) DOCUMENTS INCORPORATED BY REFERENCE. The (City's/Town's/County's) application to the Department for CDBG funding, dated _____, 20____, and all applicable federal and state statutes and regulations are incorporated into this Contract by this reference and are binding upon the Contractor.
12. (*) CIVIL RIGHTS ACT OF 1964. The Contractor will abide by the provisions of the Civil Rights Act of 1964 which states that under Title VII, no person may, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.
13. (*) SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974. In the performance of this Contract the Contractor will obey this provision which states that:

No person in the United States may on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available under this title. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 will also apply to any such program or activity.
14. (*) SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968. The Contractor will ensure that to the greatest extent feasible opportunities for training and employment arising in connection with this CDBG-assisted project will be extended to lower income project area residents. Further, the Contractor will, to the greatest extent feasible, utilize business concerns located in or substantially owned by residents of the project area, in the award of contracts and purchase of services and supplies.
15. (*) MINORITY BUSINESS ENTERPRISE. Consistent with the provisions of Executive Order 11246, the Contractor will take affirmative steps to assure that minority businesses are used when possible as sources of supplies, equipment, construction and services. Additionally, the Contractor must document all affirmative steps taken to solicit minority businesses and forward this documentation along with the names of the

minority subcontractors and suppliers to the local government CDBG recipient upon request.

16. (*) NONDISCRIMINATION. The Contractor will not discriminate against any employee or applicant for employment on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.
17. (*) OWNERSHIP AND PUBLICATION OF MATERIALS. All plans, reports, information, data, and other materials prepared by the Contractor pursuant to this Contract are to be the property of the (City/Town/County) and the Montana Department of Commerce which have nonexclusive and unrestricted authority to release, publish or otherwise use, in whole or part, information relating thereto. Any reuse without written verification or adaptation by the Contractor for the specific purpose intended will be at the Owner's sole risk and without liability or legal exposure to the Contractor. No material produced in whole or part under this Contract shall be subject to copyright or patent in the United States or in any other country without the prior written permission of the (City/Town/County) and the Montana Department of Commerce.
18. (*) REPORTS AND INFORMATION. The Contractor will maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to this Contract and such other records as may be deemed necessary by the (City/Town/County) to assure proper accounting for all project funds, both federal and non-federal shares. These records will be made available for audit purposes to the (City/Town/County) or its authorized representative, and will be retained for three years after the expiration of this Contract unless permission to destroy them is granted by the (City/Town/County).
19. (*) ACCESS TO RECORDS. It is expressly understood that the Contractor's records relating to this Contract will be available during normal business hours for inspection by the (City/Town/County), the Department, the U.S. Department of Housing and Urban Development, the U.S. Comptroller General, and, when required by law, the Montana Legislative Auditor and Legislative Fiscal Analyst.
20. (*) PLACE OF PERFORMANCE, CONSTRUCTION, AND VENUE. The parties understand and agree that performance of this contract is in the (City/Town/County) of (Name of City/Town/County) and that in the event of litigation concerning it, venue is the _____ Judicial District in and for the County of _____, State of Montana.

This Contract will be construed under and governed by the laws of the State of Montana.

21. INDEMNIFICATION. The Contractor waives any and all claims and recourse against the (City/Town/County), including the right of contribution for loss and damage to persons or property arising from, growing out of, or in any way connected with or incident to the Contractor's performance of this contract except for liability arising out of concurrent or sole negligence of the (City/Town/County) or its officers, agents or employees. Further, the Contractor will indemnify, hold harmless, and defend the (City/Town/County) against any and all claims, demands, damages, costs, expenses or liability arising out of the Contractor's performance of this Contract except for liability arising out of the concurrent or sole negligence of the (City/Town/County) or its officers, agents or employees.
22. LEGAL FEES. In the event either party incurs legal expenses to enforce the terms and conditions of this Contract, the prevailing party is entitled to recover reasonable attorney's fees and other costs and expenses, whether the same are incurred with or without suit.

23. (*) ELIGIBILITY. The Contractor certifies that the Contractor's firm and the firm's principals are not debarred, suspended, voluntarily excluded, or otherwise ineligible for participation in federally assisted contracts under Executive Order 12549, "Debarment and Suspension". (24 CFR 24.505)

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the _____ day of _____.

ARCHITECT/ENGINEER:

CITY/TOWN/COUNTY OF:

BY: _____

Architect/Engineer

BY: _____

Official Representative of the
City/Town/County

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____